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JUL 22 2019

JUDGE RANDY TODD

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

v.

CC: 2017-08906

TODD ROBINSON
DEFENDANT

JUDGE RANDAL TODD

Trial/Status Date: August 15, 2019

DEFENSE BRIEF IN SUPPORT OF OMNIBUS PRE-TRIAL MOTIONS

AND NOW, comes the Defendant, TODD ROBINSON, by and through his attorney, Patrick A. Sweeney, Trial Counsel, of the Allegheny County Office of the Public Defender, who files this Brief in support of the Pre-Trial Motions (Amended), originally filed on May 7, 2018, and amended April 8, 2019.

1. Several of the issues raised in the Omnibus Pre-Trial Motions were resolved on previous court listings (April 8, 2019 and July 11, 2019), including:
 - a. Part I (Petition for Writ of Habeas Corpus, made moot by the Commonwealth's concession that the Aggravated Assault counts (18 Pa.C.S. §2702 §§A2) were not supported by the evidence, resulting in the Commonwealth amending the Criminal Information to make Counts 1 and 2 Aggravated Assault by Physical

- Menace (18 Pa.C.S. §2702 §§A6);
 - b. Part IV (Motion for Severance, which was granted as to the Person Not to Possess a Firearm count (18 Pa.C.S. §6105 §§A1);
 - c. Part V, Motion in Limine (granted with the qualification that certain circumstances at trial may make the Defendant's prior convictions relevant);
 - d. Part VI, Motion for Discovery and Inspection (granted and resolved, with respect to the clothing recovered from the Defendant following his arrest).
2. Following argument on July 11, 2019, the outstanding issues that remain were raised in Part II (Motion to Dismiss) and Part III (Motion to Suppress Evidence).
 3. On July 11, 2019, the Preliminary Hearing Transcript, as well as photographs from the crime scene, of the Defendant's clothing, and of the Defendant's wounds (Defense Exhibits A & B) were entered into evidence for the purposes of arguing the Pre-Trial Motions.
 4. This Honorable Court directed the Defense to file a response brief by July 22, 2019 addressing those issues.

II. MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

1. The averments of paragraphs 1 through 9 under the heading of the Petition for Writ of Habeas Corpus (filed on April 8, 2019) are incorporated by reference hearing.
 - a. Following the initial encounter with Mr. Robinson and his release from that encounter, the Wilkinsburg officers learned from County Index that Mr. Robinson was wanted on an active parole warrant and began to search the area for the vehicle he was driving. (Preliminary Hearing Transcript at p8).

- b. Approximately one hour elapsed before Sgt. Morrison located the vehicle in question in the parking lot of a McDonald's restaurant in the 400-block of Penn Avenue. (PHT at p9-10).
- c. When Sgt. Morrison was able to enter the McDonald's parking lot the vehicle in question had been legally parked and Mr. Robinson was located inside the restaurant at the counter. (PHT at p10-11).
- d. Sgt. Morrison then confirmed the vehicle he observed was the same as that from their previous encounter with Mr. Robinson and requested Ofc. Duncan to come to his location. (PHT at p11).
- e. The officers then decided that rather than enter the restaurant and apprehend Mr. Robinson, they would wait for him to exit the restaurant and Ofc. Duncan would attempt to block Mr. Robinson's vehicle from exit, as his patrol car was equipped with a push bar. (PHT at p12).
- f. When Mr. Robinson exited the restaurant, he entered his vehicle as Ofc. Duncan approached and exited his patrol car. (PHT at p13).
- g. Mr. Robinson then attempted to exit the parking space his vehicle occupied, and struck Ofc. Duncan's unoccupied patrol car with the rear of the vehicle he occupied. (PHT at p14).
- h. Mr. Robinson then pulled forward and shifted back into reverse. At this point in time, Sgt. Morrison testified that himself and Ofc. Duncan were behind Mr. Robinson's vehicle, and as the vehicle reversed, Sgt. Morrison fired a single round into the vehicle and Ofc. Duncan fired at least two. (PHT at p16-17).
- i. This stands in stark contrast to Ofc. Duncan's account of this second encounter

with police during his post-incident interview with Allegheny County Police Homicide Detectives. Ofc. Duncan recounted that before Mr. Robinson exited the parking spot, he fired his service weapon “towards the driver’s side window.” (Interview Transcript at p10-11, Defense Exhibit C).

- j. Ofc. Duncan further recounted that following the shots fired by himself and Sgt. Morrison, Mr. Robinson fled from the parking lot. (IT at p13-14).
- k. Sgt. Morrison’s testimony is also in conflict with the medical evidence as shown in the photographs of the Defendant’s wounds (entered into evidence on July 11, 2019).
- l. Furthermore, the medical reports of the surgery performed on the Defendant trace the path of the bullet through his left arm and entering the left side of the chest. (see pages 106-112 of Defendant’s medical records from UPMC, Defense Exhibit D)
- m. Mr. Robinson was then able to exit the parking space he occupied and continued onto Penn Avenue, towards the City of Pittsburgh. (PHT at p18).
- n. Approximately three blocks down Penn Avenue, Mr. Robinson struck a utility pole and he exited the vehicle. (PHT at p18).
- o. Mr. Robinson was apprehended nearby, and the Allegheny County Police Department responded to process the scene and investigate the officer-involved shooting. (PHT at p18, p34-35).

DISMISSAL ANALYSIS:

Recounting the second encounter with Mr. Robinson, Sgt. Morrison testified that

himself and Ofc. Duncan were behind Mr. Robinson's vehicle, and as the vehicle reversed, Sgt. Morrison fired a single round into the vehicle and Ofc. Duncan fired at least two. NT at 16-17. This stands in stark contrast to Ofc. Duncan's account of this second encounter with police during his post-incident interview with Allegheny County Police Homicide Detectives. Ofc. Duncan recounted that before Mr. Robinson exited the parking spot, he fired his service weapon "towards the driver's side window." IT at 10-11.

It is Mr. Robinson's contention that the assertions contained within the affidavit of probable cause—that Ofc. Duncan and Sgt. Morrison discharged their service weapons at his vehicle because they were in fear for their lives and the lives of others—is the product of misrepresentations by the officers as to their locations in respect to the vehicle during this second encounter. Mr. Robinson bases his request to challenge the veracity of information contained within the affidavit of probable cause on the basis that, akin to the ability of a defendant to challenge the veracity of statements on the face of a warrant application in a pretrial suppression hearing, the same opportunity must be afforded when a criminal defendant challenges the veracity of a criminal complaint. *See Commonwealth v. Hall*, 302 A.2d 342, 344 (Pa. 1973) (explaining that "the right of a defendant to challenge the veracity of facts recited in a warrant is Not [sic] premised on an assumption of perjury by law enforcement officials").

The Court in *Hall* makes clear that "the right to challenge the truthfulness of recitals in a warrant follows from the command of Aguilar-Spinelli that the magistrate make a 'detached and objective determination' of probable cause," for "[i]f a magistrate is furnished, and reviews falsified averments, he is effectively precluded from making a detached and objective determination." *Id.* (internal citations omitted). Further, in reviewing the applicability of *Hall* in a subsequent proceeding, the Court made clear that while the Fourth Amendment requires that

allegations of falsehood or disregard for the truth must be accompanied by an offer of proof, no such showing is required by Pennsylvania law: “In *Hall*, we established as a matter of state law, that a defendant is entitled to make an inquiry into the veracity of statements included in an affidavit supporting the warrant without conditioning the right upon a ‘substantial preliminary showing’ of the potential falsity of those facts.” *Commonwealth v. Miller*, 518 A.2d 1187, 1194 (Pa. 1986).

While *Hall* and *Miller* do indeed address the veracity of averments in the affidavit of probable cause underlying a search warrant, and not those contained within a criminal complaint, the principles announced by those decisions must apply equally to both documents. In authorizing inquiry into the veracity of statements in a pretrial setting, the Court sought to afford defendants a meaningful opportunity to examine the allegations presented against them—if a warrant application could not be challenged after its authorization by a magistrate, any falsity contained therein, unknown to the magistrate, would stand immune from attack. This naturally extends to the determinations of a magistrate based upon the affidavit of probable cause and testimony presented to them at a preliminary hearing. If the magistrate is furnished with false or inaccurate information that is used to aid in his determination that the Commonwealth has alleged a sufficient factual basis for a defendant to be bound over for trial, denying the defendant the ability to explore such possibility pretrial would provide the Commonwealth the same immunity as an inaccurate warrant application.

Because the commands of the Pennsylvania Supreme Court with respect to a defendant’s ability to explore the veracity of a warrant executed against him apply in equal force to allegations within a criminal complaint, Mr. Robinson is entitled to a pretrial hearing in order to afford him an opportunity to ascertain the truthfulness of the assertions made against him.

WHEREFORE, the Defendant, TODD ROBINSON, and defense counsel respectfully requests that this Honorable Court grant this Motion to Dismiss and dismiss all counts against the Defendant, due to the misrepresentations in the affidavit.

III. MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE

1. The averments of paragraphs 1 through 9 under the heading of the Petition for Writ of Habeas Corpus are incorporated by reference hearing.
2. Three issues were raised in the Motion to Suppress filed on April 8, 2019, and are as follows:
 - a. That the original encounter between the Defendant and the Wilkinsburg Police began as a welfare check, but then soon was raised to a seizure of the Defendant without reasonable suspicion that criminal activity was afoot, as evidenced by the Officers seizing the Defendant's driver's license and calling in to dispatch so that a criminal background check and check for warrants could be conducted.
 - b. That even during and after the second encounter with the police at McDonald's, no probable cause to search the vehicle existed, since the Defendant was wanted for a parole violation, and any search of the vehicle must be supported by separate probable cause.
 - c. That during the search of the vehicle following the arrest, upon discovery of a bag in the vehicle, the proper procedure for the police at that time would be to secure a

second search warrant detailing the items to be seized, and without exigent circumstances, the failure to do so violated the Defendant's rights.

3. At the preliminary hearing, the Commonwealth presented the testimony of two witnesses, Sergeant Matthew Morrison ("Sgt. Morrison"), a shift supervisor employed by the Wilkinsburg Police department, and Detective Anthony Perry ("Det. Perry") of the Allegheny County Police Department Homicide Unit. The testimony at the preliminary hearing, as well as the post-incident interview of Officer Duncan by Allegheny County Police Homicide Detectives, established the following facts:
 - a. Sgt. Morrison explained that while he was checking the area of Taylor Way in Wilkinsburg for illegally parked vehicles, it was not necessary to make contact with Mr. Robinson to effectuate the parking ticket being issued. (Notes of Testimony, Preliminary Hearing, 07/20/2017 "PHT"), at Page 4, 19, 20.
 - b. Sgt. Morrison also explained why he decided to request backup and approach Mr. Robinson: "Wilkinsburg is generally a high-crime area. I'm sure you're aware of that. It was in a dark alley right next to a business, if you will. It's our common practice to check people that are sleeping in a vehicle for either the criminal aspect that they may be up to, or they may be intoxicated and sleeping, trying to sleep it off." PHT at p20.
 - c. Sgt. Morrison awaited the arrival of Ofc. Duncan before approaching the vehicle. PHT at p5, 20.
 - d. The officers then approached the vehicle, Ofc. Duncan on the driver's side and Sgt. Morrison on the passenger's side, and Ofc. Duncan tapped on the vehicle's window glass, awakening Mr. Robinson. PHT at p5.
 - e. Ofc. Duncan then immediately asked Mr. Robinson for identification, namely his

driver's license and vehicle registration. PHT at p 6, 21.

- f. Mr. Robinson's information was then "run" through County Index to determine the validity of his license, confirm vehicle ownership, and clarify whether any wants or warrants were outstanding. PHT at p6.
- g. After County Index advised that no outstanding warrants existed for Mr. Robinson, he was released from the scene. PHT at p8.
- h. The nature of the encounter that Sgt. Morrison and Ofc. Duncan had with Mr. Robinson, most notably his custodial status during the encounter, is made clear by the post-incident interview that Allegheny County Police Detectives conducted with Ofc. Duncan.
- i. During this interview, concerning their initial interactions with Mr. Robinson, Duncan stated "I automatically became a little suspicious, just because the alley he was parked in was illegal parking, um, the time of day, and he responded stating that he was there waiting for his cousin to open up an – an auto shop." ACPD Interview Transcript (DUNCAN) at Page 3.
- j. Duncan continued, discussing their investigation of Mr. Robinson, "Um, dispatch – they responded a few minutes later and said that, uh, the driver, he was negative on any wants or warrants. *At that time, we advised him he was free to leave.*" Id. (emphasis added).

SUPPRESSION ISSUE A: ANALYSIS:

There are three categories of police interactions which classify the level of intensity in which a police officer interacts with a citizen, and such are measured on a case by case basis.

"Traditionally, this Court has recognized three categories of encounters

between citizens and the police. These categories include (1) a mere encounter, (2) an investigative detention, and (3) custodial detentions. The first of these, a "mere encounter" (or request for information), which need not be supported by any level of suspicion, but carries no official compulsion to stop or to respond. The second, an "investigative detention" must be supported by reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or "custodial detention" must be supported by probable cause."

Commonwealth v. Collins, 950 A.2d 1041, 1046-1047 (Pa. Super. Ct. 2008) (citing *Commonwealth v. Mendenhall*, 715 A.2d 1117, 1119 (Pa. 1998)). The analysis of the distinction between mere encounter and investigative detention is challenging when officers do not indicate that the individual is not free to leave, the individual is not restricted in his movement, and the citizen does not attempt to leave. *Commonwealth v. Jones*, 378 A.2d 835, 840 (Pa. 1977).

The *Collins* court explained that "the focal point of our inquiry must be whether, considering the circumstances surrounding the incident, a reasonable person innocent of any crime, would have thought he was being restrained had he been in the defendant's shoes." 950 A.2d at 1046-1047 (citing *Commonwealth v. Reppert*, 814 A.2d 1196, 1201-1202, (Pa. Super. Ct. 2002); see also *Jones*, 378 A.2d at 840 (stating that the totality of circumstances must be evaluated). Additionally, the court provided a non-exhaustive list of factors to assist in differentiating between mere encounter and investigatory detention:

[T]he number of officers present during the interaction; whether the officer informs the citizen they are suspected of criminal activity; the officer's demeanor and tone of voice; the location and timing of the interaction; the visible presence of weapons on the officer; and the questions asked. Otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Id. at 1047.

It must be stressed that, "the combination of the threatening presence of several officers

and the indication that appellant was suspected of criminal activity [requires the conclusion that] a reasonable person would believe that he was not free to leave." *Commonwealth v. Parker*, 161 A.3d 357, 363 (Pa. Super. Ct. 2017).

In support of the Commonwealth's assertion that Mr. Robinson was not subjected to an investigative detention, they offer *Commonwealth v. Au*, 42 A.3d 1002 (Pa. 2012) as instructive as to whether a request for identification from a parked motorist constitutes an investigative detention. *See* Commonwealth's Response to Defense Motion, Motion to Suppress, ("Cmw. Res.") at Paragraphs 7-9. However, the Commonwealth's reliance on *Au* in the instant matter is misplaced. The Court in *Au* was tasked with determining whether an investigative detention had occurred where a police officer approached a vehicle parked in a business parking lot in the early morning hours, asked for identification from a passenger, and almost immediately discovered marijuana in plain view when the passenger opened the glove box to retrieve their identification. *Au*, 42 A.3d at 1003-04. Ultimately, the Court determined that by itself "a request for identification is not to be regarded as escalatory in terms of the coercive aspects of a police-citizen encounter," and that because the officer did not "activate the emergency lights on his vehicle, position his vehicle so as to block the car that appellee was seated in from exiting the parking lot, brandish his weapon, make an intimidating movement or overwhelming show of force, make a threat or command, or speak in an authoritative tone," no seizure had occurred. *Id.* at 1007-08.

Importantly, the Commonwealth overlooks that in the instant matter, more than a request for identification occurred—far more instructive to the at issue encounter is *Commonwealth v. Hudson*, 995 A.2d 1253 (Pa. Super. 2010). In *Hudson*, an officer on

routine patrol passed an intersection multiple times, each time observing Mr. Hudson notice the police vehicle and enter a nearby grocery store. *Id.* at 1255. The officer stopped to speak with Mr. Hudson and another male, asked the two men whether they had identification, and ran an NCIC check for warrants on both individuals. *Id.* When the second male was returned as negative for warrants, he was advised that he was free to leave; Hudson was placed into custody for an outstanding warrant and searched incident to arrest yielding the contraband he sought suppression of. *Id.* Hudson was convicted of various drug offenses and presented the following claim for appellate review:

Where the police officer did not observe any evidence of criminal activity and did not have reasonable suspicion to stop or detain [Hudson], did the trial court err when it determined that taking and keeping [Hudson's] identification until he was cleared of any outstanding warrants was not an investigative detention but a mere encounter not requiring reasonable suspicion and therefore not requiring suppression of the contraband subsequently found on [Hudson]?

Id. at 1255-56.

The Commonwealth contended that no facts present would support the conclusion that the interaction escalated from a mere encounter to an investigative detention—pointing out that Hudson was not informed that he was suspected of criminal activity and that the movement of Hudson and his companion were not restricted. *Id.* at 1256-57.

In reviewing the competing claims of the Commonwealth and Hudson, the Superior Court noted that the officer approached and asked the men for the identification, but at no time informed them that they were free to decline this request or leave the scene. *Id.* at 1258. Ultimately, the court concluded that viewing the record in the light most favorable to the Commonwealth, “Officer Gonzalez effectuated an investigative detention of Hudson at the time that Officer Gonzalez took and maintained possession of Hudson’s identification. In such a situation, *no reasonable person would have felt free to terminate*

the encounter and depart the scene.”

Mr. Robinson was subjected to an illegal investigatory detention when, after determining that he was not in distress or in need of police assistance, the Wilkinsburg police requested and then retained possession of his driver’s license in order to conduct an NCIC check for active warrants. Mr. Robinson’s position is strikingly akin to that of Hudson above—not only in the similarity of the license retention and NCIC check not supported by reasonable suspicion of criminal activity, but too in the fact that after this check was completed, Mr. Robinson was advised by Ofc. Duncan that he was free to leave as the companion of Mr. Hudson was. Surely, if the police were not subjecting Mr. Robinson to their custody, they would not have informed him that after the NCIC check was completed that he was free to leave. Mr. Robinson, nor any reasonable person under the circumstances, would have felt free to terminate this encounter and depart the scene while the police retained possession of his identification.

WHEREFORE, because Mr. Robinson was subjected to an investigatory detention that was not supported by reasonable suspicion of criminal activity, all evidence obtained as a result of this unlawful encounter, including the discovery of Mr. Robinson’s status as a fugitive and all items seized from the vehicle in question, must be suppressed as it constitutes fruit of the poisonous tree, stemming from his unlawful detention.

SUPPRESSION ISSUE B: ANALYSIS:

The second encounter with the Defendant at the McDonald’s was problematic, given the fact that had the Officers stopped the Defendant without putting him in fear of

death or serious bodily injury, the Defendant would have simply been placed under arrest for a probation violation, and there would be no need to search the vehicle he was operating. The Defendant did have an expectation of privacy in the vehicle that he was permitted to operate by the owner.

The Hyundai would have been legally parked, and not in an unsafe condition, which would have allowed the owner of the vehicle, or the Defendant, the opportunity to have the vehicle towed (see 75 Pa.C.S. § 3352, Removal of Vehicle).

There would have been no probable cause to search the vehicle had the Defendant simply been placed under arrest in the parking lot.

That the subsequent flight, car crash, and gathering of evidence inside the car, are “fruit of the poisonous tree” created by Officer Duncan’s actions, and the Commonwealth should not be permitted to use any evidence gathered in the Hyundai after the crash. Officer Duncan created the dangerous situation, and any potential “exigent circumstances” though his own act of shooting the Defendant prior to his driving away from the McDonald’s.

Flight and use of force in self-protection from unlawful use of force by police officers is recognized to be lawful under certain circumstances in the Commonwealth of Pennsylvania—“an arrestee’s use of self protection [sic] is justified when the arrestee reasonably believes that such force is immediately necessary to protect against an arresting officer’s use of deadly force, i.e. force which is readily capable of causing death or serious bodily injury.” *Commonwealth v. French*, 611 A.2d 175, 179 (Pa. 1992).

The officers here first encountered Mr. Robinson in the 1000 block of Taylor Way and described him as compliant during that encounter from which he was released. This first

encounter eventually led to these officers learning that Mr. Robinson was wanted on an active homicide parole warrant and was known to be violent with police. When the officers found Mr. Robinson at the McDonald's restaurant, this information as to his violent nature clouded their judgement in determining how to affect his apprehension. Had the officers stopped Mr. Robinson without putting him in fear of death or serious bodily injury, he would have been placed under arrest for a probation violation, and there would have been no need to search the vehicle he was operating.

SUPPRESSION ISSUE C: ANALYSIS

At some point in time following Mr. Robinson's apprehension, a search warrant was secured for the vehicle Mr. Robinson had been driving—this warrant was devoid of any particularized description of the property that was to be seized. The firearm in question here was discovered pursuant to the execution of the above search warrant, which in no way provided any description, even generally, of the items for which probable cause existed to be seized at the time of application.

The particularity requirements of the Fourth Amendment to the United States Constitution make “general searches . . . impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” *Marron v. United States*, 275 U.S. 192, 196 (1927).

The Pennsylvania Constitution provides even greater protection in that “no warrant to search a place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause.” Pa. Const. Art. 1 § 8; Pa.R.Crim.P. Rule 205. This requirement clearly provides more protection than the Fourth Amendment to the United States

Constitution which merely requires particularity in the description of items to be seized. *Commonwealth v. Grossman*, 555 A.2d 896, 899 (Pa. 1989) (citing *Commonwealth v. Reese*, 549 A.2d 909, 910 (Pa. 1988)).

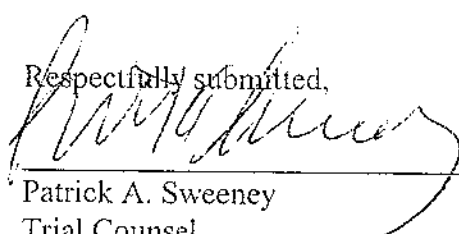
This heightened standard places particularity above probable cause in the determination of a warrant's validity—"a warrant is invalid if it does not describe as clearly as possible those items for which there is probable cause to search." *Commonwealth v. Rega*, 933 A.2d 997, 1012 (Pa. 2007) (citing *Grossman*, *supra*).

In applying Pennsylvania's particularity requirements, the Superior Court has explained that even in situations where an overly broad warrant is obtained and then a second, more particularized warrant is secured, this second warrant cannot cure the overbreadth of the initial warrant when search has already begun to occur. *Commonwealth v. Green*, 204 A.3d 469, 481 (Pa. Super. 2019) (citing *Commonwealth v. Melvin*, 103 A.3d 1, 17 (Pa. Super. 2014)).

Here, an overly broad warrant was secured and executed. A second warrant to cure this overbreadth was not even contemplated. Surely, where the vehicle being searched had been impounded and transported to Allegheny County Police Headquarters, a warrant specifically enumerating the bag and its contents within Mr. Robinson's vehicle could have been obtained as the vehicle had been secured and there was no risk of loss or destruction of evidence.

WHEREFORE, the Defendant, TODD ROBINSON, and Defense counsel respectfully requests that this Honorable Court suppress any and all items seized from the vehicle in question.

Respectfully submitted,



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cmb 7-22-19

NOTICE OF SERVICE

The Public Defenders Office hand-delivered a true and correct copy of the foregoing motion to the following:

1. The Honorable RANDAL TODD
2. Allegheny County Clerk of Courts
3. Allegheny County District Attorney's Office
4. Criminal Court Administrator

Date: 7-22-19

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF ALLEGHENY

COMMONWEALTH OF PENNSYLVANIA

versus

TODD ROBINSON

CC#: 2017-08906

Verbatim record of audio/video-recorded statement of Officer
Duncan

PRESENT:

Officer Duncan
Detective Foley
Detective Dolfi

EXHIBIT
C

1 DETECTIVE DOLFI: And just like we said,
2 everything's audio and video -

3 DETECTIVE FOLEY: Recorded in the room.

4 DETECTIVE DOLFI: You didn't lock us in, did
5 you?

6 DETECTIVE FOLEY: No. Alright, I just filled
7 out our report today. Alright, let's see... Okay, so it's
8 10:24, and... Alright, Chris Duncan, right?

9 OFFICER DUNCAN: Yeah.

10 DETECTIVE FOLEY: Alright, Chris, we brought you
11 in - Officer Duncan, we brought you in to, uh, go over the
12 incident that occurred 4-24-2017, 430 Penn Avenue, the
13 McDonalds lot, it started - the - the - we got involved, and,
14 um, around - well, the initial occurrence I guess was around
15 4:25am. That morning.

16 OFFICER DUNCAN: Yes.

17 DETECTIVE FOLEY: So just tell us in your own
18 words what you remember about the incident.

19 OFFICER DUNCAN: Okay, uh, well, the initial
20 incident, uh, Sergeant Morrison, he radioed myself and
21 dispatch advising that he was out in the thousand block of
22 Taylor Way with a, uh, male who was sleeping inside of a
23 vehicle. Um, once I got there, uh, Sergeant Morrison pointed
24 out the vehicle and I observed the male in the driver's seat
25 sleeping. Tapped on the window a few times, uh, once he

1 responded, I requested his driver's license, which he gave me.
2 Uh, relayed the information to dispatch, and um, while waiting
3 for that information to come back, um, I asked the driver what
4 his reason was there.

5 Um, I automatically became a little suspicious,
6 just because the alley he was parked in was illegal parking,
7 um, the time of day, and he responded saying that he was there
8 waiting for his cousin to open up an - an auto show. Um, my
9 knowledge is that most of those businesses don't open until
10 roughly eight o'clock in the morning. Um, dispatch, they -
11 they responded a few minutes later and said that, uh, the
12 driver, he was negative on any wants or warrants. At that
13 time, we advised him he was free to leave.

14 I'd say maybe within two to three minutes later,
15 after the driver left, um, dispatch, uh, advised us that that
16 male did have an active warrant out for a parole violation,
17 and they further went on to say that it was, um, it - it had
18 for, uh, robbery with a firearm, escape, um, I believe
19 propensity of violence towards police officers, uh, drug abuse
20 and.. uh, I believe something with alcohol. Uh, yeah, at that
21 time, me and Sergeant Morrison, we started to canvas the area,
22 um, and we - we did not see him until, uh, Sergeant Morrison
23 radioed me, I think it was around five-thirty. Um, advising
24 myself and dispatch again that he was in the parking lot of
25 McDonalds, and he observed what he thought was the actor's

1 vehicle.

2 DETECTIVE FOLEY: Okay. Something I missed -
3 what - what shift were you working that night?

4 OFFICER DUNCAN: Oh, midnight to eight shift.

5 DETECTIVE FOLEY: Okay. And who all was
6 working?

7 OFFICER DUNCAN: Just me and Sergeant Morrison.

8 DETECTIVE FOLEY: And what was your callsign
9 that night?

10 OFFICER DUNCAN: Uh, 4230.

11 DETECTIVE FOLEY: And what would Sarge's be?

12 OFFICER DUNCAN: Uh, 4204.

13 DETECTIVE FOLEY: Okay... So, you said around
14 5:30, Sergeant radioed you, said he found the car -

15 OFFICER DUNCAN: Yeah.

16 DETECTIVE FOLEY: - that he sees the car?

17 OFFICER DUNCAN: He radioed me and, um, stated
18 that he, uh, his exact words were, um, I - I believe we're out
19 with your - you know, with your boy, um, you know, in
20 reference to the thousand block of Taylor Way.

21 DETECTIVE FOLEY: And that was where?

22 OFFICER DUNCAN: Uh, the McDonalds parking lot.

23 The, uh, the front entrance. Um, he - the driver wasn't in
24 the car. We observed him inside the McDonalds standing in
25 line.

1 DETECTIVE FOLEY: Okay, that's Penn Avenue
2 McDonalds?

3 OFFICER DUNCAN: Yes, I - I think the address is
4 408 Penn Avenue.

5 DETECTIVE FOLEY: Yeah, we have - I don't know
6 if this is correct, 430 Penn Avenue.

7 OFFICER DUNCAN: It may - yeah, it may be, I
8 always get that and Get Go's, um, addresses mixed up. It's
9 one of those two.

10 DETECTIVE FOLEY: So it's right at Pennwood and
11 Penn?

12 OFFICER DUNCAN: Yes.

13 DETECTIVE FOLEY: Okay. So you pull up, you
14 meet the Sergeant at McDonalds. And where is the actor at
15 that point?

16 OFFICER DUNCAN: He's inside the - the store in
17 line. I think, uh, it looked like he had just maybe purchased
18 a coffee or something. But he was still standing in line.
19 Uh, there were a few people, uh, I believe in front of him.

20 DETECTIVE FOLEY: Okay. Alright, so what did
21 you guys do at that point?

22 OFFICER DUNCAN: Um, at that time, we - we
23 started to talk just because of, uh, the information that we
24 received from dispatch, with our knowledge that he was now in
25 there and that there were people inside. Um, we tried to

1 kinda plan the best way to actually, um, take him into
2 custody, and we agreed that we would wait until he left the
3 store.

4 DETECTIVE FOLEY: Okay. So the information, it
5 uh, we don't need it verbatim, but essentially what did you...
6 like what kind of person were you looking for? I mean what -
7 what did they tell you about him?

8 OFFICER DUNCAN: Oh, they - they told us that,
9 um, his parole - he was on parole violation, uh, it - it
10 included, uh, a murder, uh, well, homicide. Um, propensity of
11 violence toward police officers, uh, escape. Uh, robbery with
12 a firearm, and, um, drug - drug abuse.

13 DETECTIVE FOLEY: Okay. So that - that led to -
14 you guys didn't want to encounter him in the store?

15 OFFICER DUNCAN: Exactly, and - and even before
16 that happened, um, like I told Sergeant Morrison, I already
17 had suspicion, um, just based off of, you know, him, and - and
18 him being in the alley, and - and I also - and I don't know if
19 this is important, but I observed him, um, during the four
20 o'clock hour, he didn't have any shoes on. Um, but just - my
21 suspicions were raised, uh, from our initial encounter in
22 Taylor Way.

23 DETECTIVE FOLEY: Okay. Alright, so what - what
24 plan do you guys come up with while you're, uh, you're
25 watching him in the store?

1 OFFICER DUNCAN: We - we just - we agreed that
2 we were gonna wait until he actually left, um, so if he
3 started to - to walk out, I pulled my patrol vehicle up with
4 my lights activated, and, um, my window was down, and I looked
5 at him and - and said several times, sir, we need to speak
6 with you. Uh, I believe it was - it was two or three times
7 that I've actually said to him.

8 DETECTIVE FOLEY: Okay, when you say lights
9 activated, headlights or flashing lights?

10 OFFICER DUNCAN: Flashing lights.

11 DETECTIVE FOLEY: Okay. So you pull up in a
12 marked police unit - or marked police unit with your flashing
13 lights on.

14 OFFICER DUNCAN: Yes.

15 DETECTIVE FOLEY: Okay.

16 OFFICER DUNCAN: And stated several times, um,
17 sir, we need to speak with you.

18 DETECTIVE DOLFI: Is he still outside of his car
19 at that point?

20 OFFICER DUNCAN: Yeah.

21 DETECTIVE DOLFI: When you're telling - okay.

22 DETECTIVE FOLEY: Okay, what's he do at that
23 point?

24 OFFICER DUNCAN: Uh, he made direct eye contact
25 with me, and then like a few sec- within a matter of seconds,

1 he hurried up to his car. To - he got in the, uh, driver's
2 side of his car, and then I hurried up and exited my car.
3 And, um, he closed the door, but he hadn't closed it all the
4 way, um, and - and my hand was kind of on his driver's side
5 door, and his window - his car window was down.

6 DETECTIVE FOLEY: Okay. So you - you're
7 obviously - you're out of your car at this point?

8 OFFICER DUNCAN: Yeah.

9 DETECTIVE FOLEY: How did you, uh, how did you
10 park your car? Where did you park your car?

11 OFFICER DUNCAN: Uh, I parked it at - it was at
12 a - an angle with the, um, my front driver's side was, um,
13 partially behind the rear of his vehicle.

14 DETECTIVE FOLEY: Okay, so you're on an angle,
15 and you're blocking - if this is his car pulled in, this -
16 would this be the front of the store?

17 OFFICER DUNCAN: Yeah, the - let's say they -
18 that's the front of the store. Um, the way I come in is my
19 car's kinda, um, like this.

20 DETECTIVE FOLEY: Okay.

21 OFFICER DUNCAN: So the front - my driver's side
22 is this way. And, um, I'm partially blocking the, uh, rear of
23 his vehicle.

24 DETECTIVE FOLEY: Okay. And what's going on at
25 this point, now? You're out of the car?

1 OFFICER DUNCAN: Yes, my hand is on the door
2 because his - his car door hadn't closed all the way, it was -
3 it was pushed to, but it hadn't actually latched. Um, and I
4 told him several times to get out of the vehicle. He didn't
5 state it, he said okay, and he reached for his, uh - I guess
6 'cause his keys were in the ignition, so he motioned as if he
7 were going to turn his car off, um, and he kind of - he turned
8 towards me a little bit. Um, at that time I thought he was
9 getting ready to comply. Um...

10 DETECTIVE FOLEY: And you're keeping a hand on
11 the car?

12 OFFICER DUNCAN: My hand is on the door -

13 DETECTIVE FOLEY: Okay.

14 OFFICER DUNCAN: - uh, correct.

15 DETECTIVE FOLEY: Okay.

16 OFFICER DUNCAN: And then, um, he like - again,
17 within a matter of seconds, he reverses, and he takes me, um,
18 back with him into my patrol car, the uh, front end of my
19 patrol car.

20 DETECTIVE FOLEY: Okay.

21 OFFICER DUNCAN: And then, um, as soon as he
22 hits my patrol car, I let go. Um, I'm flung a - a little bit.
23 Um, and then at that time, he - he drove forward, and he hit
24 the curb. And then I believe there was a guardrail in the -
25 in the front of the store.

1 DETECTIVE DOLFI: Do you remember what kind of
2 motion your body made as you - as he was...

3 OFFICER DUNCAN: Um, I don't -

4 DETECTIVE DOLFI: And if you don't, it's okay.

5 OFFICER DUNCAN: Yeah, I don't want to call it -

6 DETECTIVE DOLFI: But you have your hand on his
7 car when he first went into reverse?

8 OFFICER DUNCAN: Yes.

9 DETECTIVE DOLFI: Okay.

10 DETECTIVE FOLEY: So he goes reverse, strikes
11 your car, you're kind of thrown -

12 OFFICER DUNCAN: Backwards.

13 DETECTIVE FOLEY: - backward. And now what does
14 he do?

15 OFFICER DUNCAN: Um, after he drives forward, he
16 reverses again. Uh, all this happened within a matter of
17 seconds, and he hits the front end of my car again. Um, at
18 this time, I mean, I - I was in fear for my safety, I mean
19 this - this guy woulda did anything to, you know, get away,
20 even if that meant, you know, striking me, um, you know,
21 striking my sarge, and he - he just - he didn't care.

22 DETECTIVE FOLEY: Um-hmm.

23 OFFICER DUNCAN: Um, so after he - he hit it the
24 second time, um, I - I pulled out my - my firearm, and I
25 discharged, uh, one round, um, I believe it was towards the -

1 the driver's side window. Um, and then Sergeant Morrison, he
2 fired one round.

3 DETECTIVE FOLEY: Okay, what happened next?

4 OFFICER DUNCAN: And then, um, it - it struck me
5 as - as odd, because after that second round was fired, um,
6 this guy, he didn't - he didn't take off, uh, immediately, he
7 didn't flee, uh, immediately. Um, and - and I thought again,
8 'cause my suspicions was maybe this guy had a gun in the car.
9 Um, so when he didn't flee, um, automatically, I thought this
10 guy was maybe - possibly loading something up in the car,
11 gettin' ready to, you know, fire back at us. So I - I believe
12 it - and I'm terrible with, uh, estimated feet, but I wanna
13 say maybe within ten to fifteen feet, um, when he was in front
14 of me, I fired one additional shot at the rear of the vehicle,
15 and then that's when he - he fled from, uh, the parking lot.

16 DETECTIVE DOLFI: Officer Duncan, when he
17 reversed that second time and struck your car again, did he,
18 um - was he pushing your car at all?

19 OFFICER DUNCAN: I - again, I don't recall,
20 because the - the - the angle that I was at, Sergeant Morrison
21 would have had a better, um, look at that, 'cause he was a
22 little bit behind me, uh -

23 DETECTIVE DOLFI: Okay.

24 OFFICER DUNCAN: - so I honestly - I don't know
25 if he actually, you know, pushed the car. I'm - I'm assuming

1 he did, but I honestly could not tell you.

2 DETECTIVE DOLFI: Do you remember where you were
3 at when that car came backwards that second time?

4 OFFICER DUNCAN: Um, he was literally like a few
5 inches away from me the second time when he was -

6 DETECTIVE DOLFI: Okay, so real close to
7 striking you. Okay.

8 OFFICER DUNCAN: Oh, yeah, he - yeah, he
9 definitely almost hit me with his vehicle.

10 DETECTIVE FOLEY: Now while this is going on,
11 the first time he hit your car, what are you saying to him?
12 What are you - are you - are you talking to him, are you
13 givin' him orders?

14 OFFICER DUNCAN: I didn't say anything the first
15 time this happened. I heard Sergeant Morrison yell, um,
16 "stop, or I'll shoot." I - again, I was kind of in shock.
17 Um, you know, when that happened.

18 DETECTIVE FOLEY: Okay. And is the guy's window
19 down?

20 OFFICER DUNCAN: His driver's side window was
21 down the whole time.

22 DETECTIVE FOLEY: Okay. Okay, and you say he -
23 he backs up, hits your car, maneuvers forward. At what point
24 do you fire the first shot?

25 OFFICER DUNCAN: Um... I would - I would say, uh...

1 I - I wanna say it was maybe a few - maybe a few seconds or so
2 after, um, I heard Sergeant Morrison say "stop, or I'll
3 shoot."

4 DETECTIVE FOLEY: Okay.

5 OFFICER DUNCAN: Um, I - I don't know if - you
6 know, I can't recall exactly how much time passed between that
7 and the time I actually fired the first shot.

8 DETECTIVE FOLEY: So you fired two shots in
9 total?

10 OFFICER DUNCAN: Yes.

11 DETECTIVE FOLEY: Okay. The second shot - what
12 part of the car would you say it - it hit?

13 OFFICER DUNCAN: Um, it was the rear of the
14 vehicle. Uh, I wanna say maybe somewhere around the - I - I
15 believe the trunk area, maybe? Either the - the trunk or the
16 - the rear window.

17 DETECTIVE FOLEY: Okay. So you said he
18 hesitated, uh, and then he took off.

19 OFFICER DUNCAN: Yes.

20 DETECTIVE FOLEY: Okay.

21 OFFICER DUNCAN: [INAUDIBLE] parking lot. Right
22 down on Penn.

23 DETECTIVE FOLEY: What - yeah, what do you
24 remember about that [INAUDIBLE]?

25 OFFICER DUNCAN: Um, after he, uh, he took off

1 down Penn, um, I immediately got in my car, and I began to
2 give chase. Sergeant Morrison got in, and at that time,
3 Sergeant Morrison, uh, put out a description of the actor, um,
4 while we were driving down Penn, and I would say, uh, within
5 maybe two minutes or so, uh, we observed his car wrecked into
6 a pole. Uh...

7 DETECTIVE FOLEY: Okay, now what direction on
8 Penn?

9 OFFICER DUNCAN: Uh, he was going west towards
10 the city.

11 DETECTIVE FOLEY: Okay. And you're ahead of
12 Sergeant Morrison, vehicle-wise?

13 OFFICER DUNCAN: Yes.

14 DETECTIVE FOLEY: Okay, so you pull out, and
15 then where do you see his car wrecked?

16 OFFICER DUNCAN: Um, it was - he crashed into a
17 pole, I believe it was, uh, right just before you get to the
18 Peppi's, uh, restaurant.

19 DETECTIVE FOLEY: Okay. Right at the Family
20 Dollar there?

21 OFFICER DUNCAN: Uh, yeah.

22 DETECTIVE FOLEY: Okay. And what'd you - what'd
23 you notice about the car at that point?

24 OFFICER DUNCAN: Uh, I mean it was - it was just
25 totaled, it was, um... it was, you know, wrecked, he went

1 straight into a pole. But he wasn't in the car. Uh, there
2 was a guy, um, he started stating that he ran this way, uh, in
3 the direction towards the rear of Family Dollar. Uh, so I got
4 in my car and I radioed dispatch letting him know that I would
5 be on foot searching for him. And, uh, I want to say maybe,
6 uh, three to five minutes later, I observed, uh, him. He was
7 lying in the bushes, um, on the side of the, uh, Family
8 Dollar.

9 DETECTIVE FOLEY: So you're driving around, or
10 are you walking around?

11 OFFICER DUNCAN: No, I was - I was walking. I
12 had already got - gotten out of my car and radioed dispatch
13 letting 'em know that I'd be on foot looking for him.

14 DETECTIVE FOLEY: Uh, the whole time,
15 McDonald's, the alley, McDonald's, as he pulls away, anyone
16 else in the car?

17 OFFICER DUNCAN: In his vehicle?

18 DETECTIVE FOLEY: Yeah.

19 OFFICER DUNCAN: No, no, just the guy.

20 DETECTIVE FOLEY: Okay, he's the only one in the
21 car?

22 OFFICER DUNCAN: Yeah.

23 DETECTIVE FOLEY: Okay. And did - are you the
24 one that found him, you - you saw him?

25 OFFICER DUNCAN: Yes, I - I found him, I was the

1 first one there. Uh, once I found him, um, I told -- I ordered
2 "let me see your hands, let me see your hands," and he stated
3 "I was shot." And then at that point I got on the radio and
4 advised dispatch that he was shot and to send medics.

5 DETECTIVE FOLEY: But where was he when you
6 found him?

7 OFFICER DUNCAN: Uh, he was lying in -- in the
8 set of bushes, uh, on the side of Family Dollar.

9 DETECTIVE DOLFI: Now did he show you his hands
10 at all, or was he --

11 OFFICER DUNCAN: No, he --

12 DETECTIVE DOLFI: -- not in any condition to --

13 OFFICER DUNCAN: -- yeah, he -- he just kept
14 sayin' "I can't move my hand, I can't --"

15 DETECTIVE DOLFI: Okay.

16 OFFICER DUNCAN: "I can't move my hand."

17 DETECTIVE DOLFI: Now did you observe blood, I
18 mean, did you see --

19 OFFICER DUNCAN: I did.

20 DETECTIVE DOLFI: -- tell that he was shot?

21 OFFICER DUNCAN: Yeah, I -- I seen blood.

22 DETECTIVE DOLFI: Okay.

23 OFFICER DUNCAN: And then at that time, I, um...
24 and I put my firearm away, um, got in the -- well, I put my
25 gloves on, and then got in the -- in the bushes, and tried to,

1 you know, just to confirm that he, you know, he was shot.

2 DETECTIVE DOLFI: Yeah.

3 OFFICER DUNCAN: Um, and then at that time,
4 that's when I radioed dispatch letting them know that he was
5 back there and to have medics respond there.

6 DETECTIVE FOLEY: Did you cuff him?

7 OFFICER DUNCAN: I did.

8 DETECTIVE FOLEY: Okay. Now was there help
9 there relatively quickly, other officers, other...?

10 OFFICER DUNCAN: Yeah, there was, uh -- a couple
11 city officers, Edgewood, and Swissvale.

12 DETECTIVE FOLEY: Okay. How about the medics?
13 Um, medics there a short -- a short time later?

14 OFFICER DUNCAN: Yeah, um, I -- I'd say maybe...
15 five or ten minutes later.

16 DETECTIVE FOLEY: And then they take over
17 treatment of him?

18 OFFICER DUNCAN: Yes.

19 DETECTIVE FOLEY: Did you guys find anything at
20 the scene there?

21 OFFICER DUNCAN: No, other than his, um, his
22 cell phone, um, we -- we didn't -- we didn't see anything else.

23 DETECTIVE FOLEY: Okay, and then, um, Sergeant
24 Morrison coordinates, uh... uh, watching the second scene, or
25 the first scene, McDonald's?

1 OFFICER DUNCAN: Yes, he -

2 DETECTIVE FOLEY: With officers?

3 OFFICER DUNCAN: - he had, um, I believe it was
4 a Swissvale unit. They went back to the McDonald's and, um,
5 just to secure, and then I think they may - they may have
6 spoke with someone, I'm not completely sure, though.

7 DETECTIVE FOLEY: And then his car is another
8 scene?

9 OFFICER DUNCAN: Yes.

10 DETECTIVE FOLEY: Okay. Alright, anything else
11 you can think of?

12 OFFICER DUNCAN: Um... no, I - I don't... No,
13 there's - there's nothing else, I mean I - I tried to, you
14 know, recall, but that's exactly, you know, how it happened,
15 but other than that, no, there's nothing else I can think of.

16 DETECTIVE DOLFI: You don't think -

17 DETECTIVE FOLEY: So you worked the midnight to
18 eight shift last night, finishing up eight o'clock this
19 morning?

20 OFFICER DUNCAN: Yes.

21 DETECTIVE FOLEY: Okay. And then went to
22 criminal court?

23 OFFICER DUNCAN: Yeah.

24 DETECTIVE FOLEY: Okay. Alright, so we'll get
25 you out of here, let you get some rest.

1 OFFICER DUNCAN: Okay.

2 DETECTIVE FOLEY: Alright, thank you for coming
3 in, and, uh -

4 OFFICER DUNCAN: Oh, no problem, thank you.

5 DETECTIVE FOLEY: - we'll talk to you - we'll
6 give you a call later today, I'll leave you a message -

7 OFFICER DUNCAN: Okay.

8 DETECTIVE FOLEY: Uh, for the hearing, the
9 hearing's tomorrow.

10 OFFICER DUNCAN: Oh, yeah, that's - that's

11 DETECTIVE DOLFI: Yeah, it starts -

12

13 [END OF RECORDING]

I hereby certify that this is a true and
correct transcript of the proceedings in the above-entitled
matter.

Chelsea Bodnar, Legal Secretary

Allegheny County Office of the Public Defender

UPMC - PRESBYTERIAN
PA

*** RADIOLOGY REPORT ***

Patient Name: ROBINSON, TODD A DOB: [REDACTED]
MRN: 971056897 Gender: M Location: EMEP (PUHSHY)
Patient Phone Number: 412-351-3548
Exam Desc: XRAY HUMERUS MINIMUM 2 VIEWS LEFT

Collection Date: 04/24/2017 09:05
Dictated on : 04/24/2017 09:49

Attending MD: THOMAS P MARTIN

Requesting MD: THOMAS P MARTIN

Accession #: 84115546

Visit Number: 0251451277114

Attending Interpreter: DON WILLIAMS
Assisting Interpreter:

*** FINAL REPORT ***

Reason for the Exam:

LEVEL 1 GSW

PROCEDURE(S):

XRAY HUMERUS MINIMUM 2 VIEWS LEFT

CLINICAL HISTORY:

Age: 39 years . Gender: Male.

Stated history: " LEVEL 1 GSW" Additional history: None.

TECHNIQUE:

2 views of the left humerus

COMPARISON:

None.

FINDINGS:

There is a large skin and soft tissue defect along the medial aspect of the upper arm. A radiodense ribbon projects over this region with multiple metallic clips. There are punctate foci of shrapnel in this area.

No acute fractures or traumatic malalignment is appreciated in the region of the left humerus.

IMPRESSION:

NO ACUTE FRACTURE OR TRAUMATIC MALALIGNMENT.

LARGE SKIN DEFECT WITHIN THE MEDIAL SOFT TISSUES OF THE LEFT UPPER EXTREMITY. THIS IS BETTER APPRECIATED CLINICALLY.

PUNCTATE FOCI OF METALLIC DENSITY MAY REFLECT SHRAPNEL MATERIAL.

THERE ARE ALSO SURGICAL METALLIC CLIPS.

RELEVANT CLINICAL INFORMATION: LEVEL 1 GSW

Dictated by: DON WILLIAMS

Signed by: DON WILLIAMS

Signed on: 04/24/2017 at 09:49 AM

<<< PAGE 1 >>>

EXHIBIT

D



UPMC Presbyterian

Presbyterian Hospital
Pittsburgh PA 15213

Phone: (412) 647-1670 Fax: (412) 647-1669

Referred By: WATSON, GREGORY Phone: CPT : 93971

Patient:	TODD A ROBINSON 39 MB
Acct. MRN:	971056897 G0801
Birth Date:	[REDACTED]
Phone:	(412) 351-3548

Upper Limb Venous Duplex Scan, unilateral

Date: 5/1/2017

Mr. TODD A ROBINSON had a Upper Limb Venous Duplex Scan, unilateral on 5/1/2017. If you have any questions regarding this study please do not hesitate to contact us.

Indications:

Pain left arm [M79.602].

This 39 year-old male presents with left arm pain.

FINDINGS:

A venous duplex of the left upper extremity was performed from the jugular to the antecubital fossa level. All venous structures examined were within normal limits. There was good color filling, normal augmentation and compression at all levels. Please note that the proximal subclavian vein cannot be properly examined by a duplex scan.

IMPRESSION: No evidence of DVT in the left upper extremity on this exam.

Mohammad H Eslami MD

Signed by Mohammad H Eslami MD on 2017-05-02 11:36:16 AM

Brian Kostrub, RVT

Signed by Brian Kostrub, RVT on 2017-05-01 11:15:18 AM

UPMC Presbyterian
General Surgery
Operative Report

PATIENT NAME: ROBINSON, TODD A
MRN: 971056897
ACCOUNT #: 0251451277114
ROOM #: 6GF/G619
DATE OF BIRTH: [REDACTED]
SURGEON NAME: JASON SPERRY
ATTENDING PHYSICIAN: GREGORY WATSON
SURGERY DATE: 04/24/2017
ADMISSION DATE: 04/24/2017
DISCHARGE DATE:

PREOPERATIVE DIAGNOSIS: Gunshot wound to left shoulder, left chest.

POSTOPERATIVE DIAGNOSIS: Gunshot wound to left shoulder, left chest.

PROCEDURE: Left chest tube placement, exploration of left axillary artery and vein, repair of left axillary vein, proximal exploration of left axillary artery, proximal arterial control, distal arterial control, ligation of branches of the axillary artery and vein. Vascular will dictate separate arterial bypass procedure. 3 compartment left forearm fasciotomies. Creation of muscle flap/advancement flap of posterior upper arm to cover bypass graft of left upper arm. Removal of foreign body from chest wall (bullet)

We initiated the procedure after the chest abdomen groin and neck were prepped and draped in the usual standard trauma fashion. A left chest tube was placed and secured at 5th intercostal space while pressure was being held on the axillae. We first made an incision over the medial upper arm over the humerus and extended proximally to the left chest. We opened up some of the pectoralis major and other muscle bellies and we followed the bullet tract to the chest wall and removed the foreign body. We next exposed the distal axillary artery and vein. We repaired a vein injury with 6-0 prolene, branches of the axillary artery and vein were ligated. We placed a vascular clamp on the proximal axillary artery under direct vision and stopped major bleeding. We then went proximal and got a vessel loop around it proximally and also obtained distal control of artery and vein. We called vascular surgery, Dr. Avergerinos, came to assist. Vascular then came in and performed a vein bypass graft of the distal left axillary artery to the brachial artery, which will be dictated under a separate note. Following their successful completion of arterial inflow to the left arm via the brachial artery, we determined after about 4 hours since the injury elected the patient required left forearm fasciotomies.

An incision was made in the anterior surface of the forearm starting medially and sweeping laterally on the radial side back towards the medial side, the ulnar side of the forearm. We were able to make skin flaps and then opened up the large compartment, the anterior compartment of the forearm and mobile wad compartment and deep compartment of the forearm. We then did a volar surface incision and also opened up the fascia. There, we did 3 compartment fasciotomies of the left forearm. The wound looked well. We loosely approximated the skin after we had opened up the fascial compartments. We then planned to cover the new venous bypass graft. We made some muscular flaps of both left upper arms. We were able to dissect the subcutaneous tissue and the muscle and we were able to approximate this muscle over the venous bypass graft. Covering it totally, protecting it, we placed a 7-French JP drain in the posterior shoulder tracking to the vascular bypass graft, We then reapproximated our incision, which was overlying the pectoralis major, all the way down to the mid humerus and we closed the

Facility: PUHSHY

skin and subcutaneous tissue with staples over a Penrose drain and again with verified we had adequate hemostasis and reapproximating the dead space. Patient tolerated the procedure well. He had a palpable pulse in his left radial artery. At the end of the case, his wound was hemostatic. Wet-to-dry dressings were placed in his forearm fasciotomy sites on the ventral and dorsal surfaces and sterile Kerlix was then placed after the wet-to-dry over it and we placed a sterile dressing over the axillary, brachial artery incision, which was closed over a Penrose. The Penrose was sewed to itself. The patient tolerated the procedure well.

I, Dr. Jason Sperry, was present for the entire case. I scrubbed for all key portions dictated here. Vascular Surgery would dictate a separate component for their venous bypass graft of the distal axillary artery/antebrachial artery.

Electronically authenticated at end of document.

Dictated by: Jason L. Sperry, M.D.

D: 04/24/2017 05:00PM, JLS T: 04/24/2017 11:32PM, hn

R:

Confirmation # 506536/ Document ID: 9954473

Electronically Authenticated and Edited by:

JASON L. SPERRY, MD on 04/25/2017 09:05 AM EDT

UPMC Presbyterian
General Surgery
Operative Report

PATIENT NAME: ROBINSON, TODD A
MRN: 971056897
ACCOUNT #: 0251451277114
ROOM #: 8G/G0801
DATE OF BIRTH: [REDACTED]
SURGEON NAME: BRIAN ZUCKERBRAUN
ATTENDING PHYSICIAN: GREGORY WATSON
SURGERY DATE: 04/26/2017
ADMISSION DATE: 04/24/2017
DISCHARGE DATE:

TITLE OF OPERATION: Closure of left arm wound.

SURGEON: Brian Zuckerbraun, M.D.

INDICATIONS: Mr. Robinson is a gentleman who was shot in the left arm who had fasciotomies of his left forearm. These wounds were left open.

DESCRIPTION OF OPERATION: Under general endotracheal anesthesia with the patient in supine position, after padding of all pressure points, his arm was prepped and draped in the usual sterile fashion. It was irrigated, anterior wound was then partially closed with staples. Closed suction drain was placed and this was further closed with staples on the dorsal aspect of his arm. It was closed with 2-0 nylon interrupted vertical mattress sutures. All sponge and needle counts were reported to be correct at the end of the operation.

ATTESTATION: I was present for, scrubbed, and performed all portions of the operation as dictated above.

Electronically authenticated at end of document.

Dictated by: Brian S. Zuckerbraun, M.D.

D: 05/02/2017 06:29AM, BSZ T: 05/02/2017 02:57PM, hn
R:
Confirmation # 517335/ Document ID: 9989148
Electronically Authenticated by:
BRIAN ZUCKERBRAUN, MD on 05/04/2017 10:09 AM EDT

UPMC Presbyterian
Vascular Surgery
Operative Report

PATIENT NAME: ROBINSON, TODD A
MRN: 971056897
ACCOUNT #: 0251451277114
ROOM #: 6GF/G619
DATE OF BIRTH: [REDACTED]
SURGEON NAME: EFTHIMIOS AVGERINOS
ATTENDING PHYSICIAN: GREGORY WATSON
SURGERY DATE: 04/24/2017
ADMISSION DATE: 04/24/2017
DISCHARGE DATE:

SURGEON: Efthimios Avgerinos, M.D.

ASSISTANT: Andrew Leake, M.D.

PREOPERATIVE DIAGNOSIS: Left upper extremity vascular injury.

POSTOPERATIVE DIAGNOSIS: Left upper extremity vascular injury.

PROCEDURES: Left proximal brachial artery reconstruction by interposition of reverse basilic vein. Basilic vein harvesting length 7 cm.

INDICATIONS FOR PROCEDURE: Mr. Robinson Todd is a 39-year-old patient. This was an intraoperative consultation by Dr. Sperry who had obtained control by the time we got to the operating room.

DESCRIPTION OF PROCEDURE: Dr Sperry had already looped the proximal brachial artery and he had also placed a clamp at the more distal part of the incision, what seemed to be the brachial artery. Some hemostasis was performed and we then dissected the brachial artery injury area. There was a partial transection of the proximal brachial artery and after he obtaining proximal and more distal control, I introduced a Fogarty 3 distally to make sure there was no thrombus. The Fogarty would not advance more than 2 cm, so at this point I extended the incision further down in the bicipital groove and exposed a lengthier segment of the brachial artery to realize that there was a bluish portion of the brachial artery and potentially an intimal flap. At this point, I decided that I have to interpose the venous segment. The brachial artery was transected and the injured bruised portion was resected and sent to Pathology. Basilic vein was identified and was harvested for 7 cm. It was prepped and reversed. 5000 units of heparin were given and the basilic vein was anastomosed at the proximal part of the brachial artery. The end result was hemostatic. I then performed an end-to-side anastomosis to the brachial artery. The distal anastomosis was performed with a 6-0 Prolene and the brachial stump was ligated. The end result was satisfactory. I had an excellent flow through the basilic vein conduit and an excellent radial pulse. The trauma surgeons will dictate the rest portion of the procedure that include fasciotomies. Copious irrigation followed and the patient tolerated the procedure well and returned to the Intensive Care Unit in stable condition.

ATTESTATION STATEMENT: This is Dr. Efthimios Avgerinos and I attest that I was present throughout the whole procedure, directly performing or supervising all key aspects.

Electronically authenticated at end of document.

Dictated by: Efthymios Avgerinos, MD

D: 04/24/2017 07:46PM, EA T: 04/25/2017 12:07AM, hn

R:

Confirmation # 511110/ Document ID: 9955280

Electronically Authenticated and Edited by:

Efthymios D Avgerinos, MD on 04/25/2017 12:03 PM EDT

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

v.

CC: 2017-08906

TODD ROBINSON
DEFENDANT

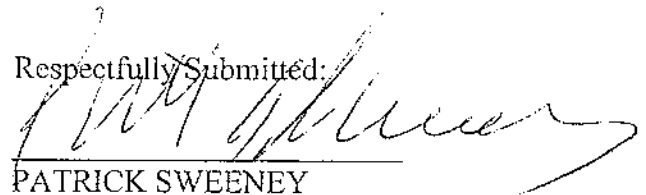
JUDGE RANDAL TODD

Trial/Status Date: August 15, 2019

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully Submitted:



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